

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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COURTNEY MOTLEY.

Case No. 2:21-cv-02075-GMN-BNW

**Plaintiff,**

## ORDER

v.

**STATE OF NEVADA, et al.,**

### Defendants.

10 Before the Court are three motions from Plaintiff that request various forms of relief. ECF  
11 Nos. 91, 93, and 94. The Court addresses each request, in turn, below:

12       **Bench Trial.** Plaintiff requests that the Court set the case for a bench trial. ECF No. 91. In  
13 response to Plaintiff's recent request for a bench trial, the Court informed Plaintiff that he could  
14 not unilaterally change the proceeding from a jury trial to a bench trial. ECF No. 87. The Court  
15 directed Defendants to indicate whether they consent to a bench trial. *Id.* To date, Defendants  
16 have not responded. As the Court previously explained, Defendants must first consent to a bench  
17 trial before Plaintiff's request can be granted.

18       **Trial Date.** Plaintiff also requests that the Court set a trial within 45 days. ECF No. 91.  
19       The Court previously indicated that it would set a new trial date once the Court receives a notice  
20       of appearance from appointed pro bono counsel or a notice from the Pro Bono Program that it  
21       was unable to find an attorney for Plaintiff. ECF No. 78. The Court later directed Plaintiff to  
22       indicate whether he wishes to proceed pro se or remain referred to the Federal Pro Bono Program.  
23       ECF No. 87. To date, Plaintiff has not informed the Court of his decision. The Court must receive  
24       Plaintiff's response before it can set a trial date.

25        ***Production of Video Footage.*** Plaintiff moves to compel Defendants to produce video  
26 footage from September 24, 2021. ECF Nos. 91 and 94. However, Defendants indicated in their  
27 response to Plaintiff’s Requests for Production that they do not have the video footage in their  
28 possession or control. ECF No. 89-1 at 3. The Court cannot compel Defendants to produce that

1 which they do not have. *U.S. Equal Emp. Opportunity Comm'n v. KVP, LP*, No. 2:23-cv-01308-  
2 JCM-EJY, 2025 WL 1042726, at \*3 (D. Nev. Mar. 5, 2025). As the Court previously instructed,  
3 Plaintiff may move for spoliation sanctions if he so chooses. ECF No. 90; *see also* FED. R. CIV.  
4 P. 37(e).

5 ***Production of Regulations/Procedures.*** Plaintiff requests that the Court order production  
6 of Defendants' regulations and procedures regarding video extraction. ECF No. 91. But before  
7 the Court can compel production, Plaintiff must have served Defendants with a request for  
8 production under Rule 34. FED. R. CIV. P. 37(a)(3)(B)(iv). Plaintiff's Requests for Production did  
9 not include a request for Defendants' regulations and procedures. *See* ECF No. 89-1. The Court  
10 therefore cannot compel Defendants to produce such documents.

11 ***Subpoena Duces Tecum.*** Plaintiff asserts that Defendants must comply with the subpoena  
12 duces tecum he issued on May 2, 2025. A subpoena duces tecum is issued by a party to a third  
13 party/nonparty. *See* FED. R. CIV. P. 45. Defendants are not third parties and thus are subject to  
14 party discovery under Rules 33, 34, and 36, not subpoenas under Rule 45.

15 ***Default.*** Plaintiff asks the Court to enter a default against Defendants as a sanction for  
16 failing to produce video footage. But as discussed above, the Court has not compelled Defendants  
17 to produce such footage. Defendants therefore have not, as Plaintiff contends, violated a court  
18 order. *See* FED. R. CIV. P. 37(b)(2)(A). Thus, the Court cannot determine at this time whether  
19 sanctions against Defendants should issue. If Plaintiff chooses to file a motion based on spoliation  
20 of evidence, he must include the relevant points and authorities in support of such request. ECF  
21 No. 90.

22 ***Leave to Amend.*** Lastly, Plaintiff seeks leave to amend his complaint to request additional  
23 "garnishments," or prayers for relief. ECF No. 93. However, as the Court previously explained, a  
24 motion for leave to amend must include a complete copy of the proposed amended complaint  
25 attached. ECF No. 88 at 3; LR 15-1. Because Plaintiff has failed to attach a proposed amended  
26 complaint here, the Court denies this request.

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1     **I. CONCLUSION**

2                 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Default Judgment,  
3 Immediate Relief Request, and Bench Trial (ECF No. 91), Motion for Leave to Amend (ECF  
4 No. 93), and Motion to Compel (ECF No. 94) are **DENIED**.

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6                 DATED: May 8, 2025

7                   
8                 BRENDA WEKSLER  
9                 UNITED STATES MAGISTRATE JUDGE

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